

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BENJAMIN ZIELINSKI,

Plaintiff,

v.

FIRST NATIONAL INSURANCE  
COMPANY OF AMERICA,

Defendant.

CASE NO. 3:19-cv-06244-RBL

ORDER ON DEFENDANT’S MOTION  
TO STAY ENFORCEMENT OF  
REMAND ORDER PENDING  
APPEAL TO THE NINTH CIRCUIT

DKT. # 19

THIS MATTER is before the Court on Defendant First National Insurance Company of America’s Motion to Stay Enforcement of Remand Order Pending Appeal to the Ninth Circuit. Dkt. # 19. On March 26, 2020, the Court granted Plaintiff Benjamin Zielinski’s Motion to Remand on the basis that First National’s estimate of the amount in controversy was based in part on unreasonable assumptions. Dkt. # 18 at 5. Despite finding issues with both parties’ methods of calculation, the Court remanded this class action to state court because First National had not met its burden under *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1199 (9th Cir. 2015). *Id.*

When deciding whether to grant a stay, courts consider the following factors:  
“(1) whether the stay applicant has made a strong showing that he is likely to succeed on the

1 merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance  
2 of the stay will substantially injure the other parties interested in the proceeding; and (4) where  
3 the public interest lies.” *Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011) (quoting *Nken*  
4 *v. Holder*, 556 U.S. 418, 432 (2009)). The first two factors are the most important. *Id.* With  
5 respect to the first factor, a movant need not show that they are more likely than not to succeed  
6 on the merits; rather, they need only demonstrate a “substantial case for relief on the merits” or  
7 that “serious legal questions are raised” by the appeal. *Id.* at 967-68.

8 First National argues that its appeal raises the important legal question of what constitutes  
9 a “reasonable assumption” by a defendant in a CAFA case “when a plaintiff’s class definition is  
10 so specific that a defendant would have to investigate every potential class member to establish  
11 federal jurisdiction.” Motion, Dkt. # 19, at 3-4. First National further argues that the possibility  
12 of spending time and money on duplicative litigation in state court if the case is sent back to  
13 federal court constitutes irreparable injury. First National also points out that any stay would be  
14 brief in light of CAFA’s requirement that appeals from remand orders be resolved within 60  
15 days. 28 U.S.C. § 1453(c)(2). There is therefore little possibility of injury to Zielinski.

16 Zielinski responds (belatedly) that, because the remand order has already been issued, the  
17 Court now lacks jurisdiction to entertain First National’s Motion. Alternatively, Zielinski argues  
18 that First National cannot be harmed because Zielinski has promised not to move forward with  
19 the state court action until the appeal is resolved. Even if the case did move forward, Zielinski  
20 points out that discovery in the state court proceedings would also be useful if the case is  
21 removed to federal court. Further, Zielinski contends that First National’s appeal does not raise  
22 novel legal questions and will surely be denied.

1       The Court disagrees with Zielinski that jurisdiction is lacking. As many courts have  
2 already observed, CAFA's provision allowing defendants to appeal remand orders would be  
3 somewhat toothless if they were unable to obtain a stay from the district court. *See, e.g.,*  
4 *Broadway Grill, Inc. v. Visa Inc.*, No. 16-CV-04040-PJH, 2016 WL 6069234, at \*2 (N.D. Cal.  
5 Oct. 17, 2016) ("Because the remand order is appealable under CAFA, this court retains  
6 jurisdiction over the request to stay the case."); *Baron v. Johnson & Johnson*, No. SACV 14-  
7 1531 JGB SPX, 2014 WL 7272229, at \*2 (C.D. Cal. Dec. 17, 2014) ("[C]ourt have interpreted  
8 [28 U.S.C. § 1453(c)] to . . . provide continuing jurisdiction to reopen a previously remanded  
9 case."); *Manier v. Medtech Prods.*, 29 F. Supp. 3d 1284, 1287 (S.D. Cal. 2014) ("The Court  
10 finds that it is appropriate for the Court to address a motion to stay pending appeal of a remand  
11 order as Congress has specifically allowed these [CAFA] remand orders to be appealable."). The  
12 Court has limited jurisdiction to resolve First National's Motion.

13       The Court also agrees with First National that a stay is appropriate in this case. First  
14 National's appeal raises serious questions about how the Ninth Circuit's standard for evaluating  
15 calculations of the amount in controversy applies in cases such as this where the plaintiff has  
16 limited their class definition in multiple nuanced ways. Indeed, this Court found remand to be a  
17 close question.

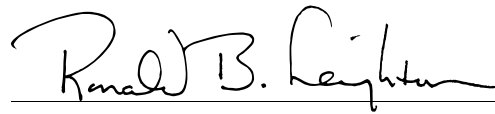
18       And while the Court agrees that discovery in state court could be equally useful if the  
19 case was sent back to federal court, the parties would still likely expend some duplicative efforts  
20 in state court. Zielinski's promise not to advance the case in state court is also not fully  
21 reassuring, since the court may advance the case on its own. This representation does, however,  
22 demonstrate that Zielinski does not stand to be injured by a stay because he already intends to  
23 wait until the appeal is resolved before moving forward with his lawsuit. Indeed, if Zielinski's  
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1 promise is genuine, his motivation for opposing First National's Motion is somewhat mysterious.  
2 Finally, the Court finds that the likelihood of saving judicial resources means that a stay is in the  
3 public interest.

4 For these reasons, the Court GRANTS First National's Motion to Stay Enforcement of  
5 Remand Order Pending Appeal to the Ninth Circuit.

6 IT IS SO ORDERED.

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8 Dated this 15th day of May, 2020.

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11 Ronald B. Leighton  
12 United States District Judge  
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